

CITY OF PORTLAND

Chapter 17.102 Solid Waste & Recycling Collection

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(New Chapter substituted by Ord. No. 164916 and by Ord. No. 165001, effective January 23, 1992.)

17.102.010 Declaration of Policy.

(Amended by Ordinance Nos. 169103, 171067, 177360 and 178422, effective June 18, 2004.) It is the policy of the City of Portland to reduce the amount of Solid Waste generated and disposed by promoting aggressive waste prevention and recycling activities. City policy shall promote the development of environmentally and economically sound practices regarding the collection, processing and end use of Solid Waste, recyclable material and compostable material. In order to attain these goals and protect public health and the environment, the City shall regulate collection of Solid Waste, recyclable material and yard debris within the City's Urban Services Boundary. In carrying out this policy, the goals of this Chapter are:

- A.** To continue to set recycling goals for Portland that are among the most challenging in the nation.
- B.** To achieve a recycling goal of 60 percent in 2005.
- C.** In the year 2005, reevaluate the recycling goal and set an aggressive goal for 2010.
- D.** To ensure the safe and sanitary collection, transportation and recovery of Solid Waste, recyclable and yard debris materials.
- E.** To provide Portland residents and businesses the opportunity to recycle more materials through convenient on-site, curbside and depot collection programs and through the addition of recyclable materials to the curbside collection program as appropriate.
- F.** To establish and enforce Solid Waste, recyclable and compostable material collection standards to ensure uniform, cost effective and high quality service delivery to all residential customers.
- G.** To establish rates for residential waste collection which are fair to the public, encourage waste reduction, and promote safe, efficient collection.
- H.** To promote community awareness in order to achieve the highest participation possible in the Solid Waste and recycling collection system.
- I.** To enhance waste reduction and recycling in the multifamily, commercial, institutional and industrial sectors by ensuring that comprehensive recycling systems are provided at every establishment not covered by the residential franchise, and that owners of the establishments encourage extensive use of those systems by all employees.

J. To undertake research, studies and demonstration projects on developing more efficient, economical and effective methods of waste reduction, recycling and waste collection.

17.102.020 Definitions.

(Amended by Ordinance Nos. 165625, 166318, 166567, 166924, 167236, 168856, 169103, 169817, 171812, 177360 and 178422, effective June 18, 2004.) For purposes of Chapter 17.102, and rules adopted thereunder, the following terms shall have the following meanings:

A. "Administrative Rule" means all rules promulgated under Section 17.102.030 of this Chapter.

B. "Approved Residential Recycler" means a Franchisee having 3,000 or more residential customers in the City as of September 1, 2002 and having also received City approval of its recycling plan for an assigned Franchise territory. "Approved Residential Recycler" includes any employees or other persons authorized to act on behalf of the Approved Residential Recycler.

C. "Assessment" means a civil penalty assessed for an infraction.

D. "Assigned Territory" means an area within the Urban Services Boundary of the City of Portland in which only a Franchisee designated by the City may collect Solid Waste and recyclable material from residential customers.

E. "Business" is any commercial entity, including industrial and institutional, but not including multifamily customers.

F. "Business Day" means Monday through Friday excluding legal holidays.

G. "Business Entity" means any person engaging in a commercial activity.

H. "City" means the City of Portland and the area within the City Urban Service Boundary.

I. "Collect" or "Collection" includes accept, accumulate, store, process, transport, market or dispose of as required by City regulations, Metro, state and federal law.

J. "Commercial" means relating to an entity that is non-residential in nature or, if residential, consists of five or more dwelling units on a single tax lot.

K. "Commercial Collection" means the collection of Solid Waste and/or recyclable materials from:

1. A non-residential source;

2. A multifamily residence of five or more units; or

3. The Commercial Self Hauling of Solid Waste from five or more residential units located on a single tax lot.

L. "Compensation" means and includes:

1. Any type of consideration paid for service, including, without limitation, rent or lease payments and any other direct or indirect provision of payment of money, goods, services or benefits by owners, tenants, lessees, occupants or similar persons;

2. The exchange of services between persons; and

3. The flow of consideration from the person owning or possessing the Solid Waste or recyclable material to the person providing the service or from the person providing the service to the person owning or possessing the Solid Waste or recyclable material

M. "Compostable Material" means yard debris, food waste and food soiled paper when source separated for controlled biological decomposition.

N. "Compostable" and "Compostables" have the same meaning as Compostable Material.

O. "Composting" means the series of activities, including collection, separation, and processing, by which compostable materials are recovered from or otherwise diverted from the Solid Waste stream for controlled biological decomposition. Composting includes composting of source separated organics but not composting of mixed waste.

P. "Customer," when used to refer to Commercial service, means an entity that has arranged for garbage service to be provided by a commercial Permittee in exchange for compensation, excluding residential service covered by a Franchise. Where several businesses share garbage containers and service, "Customer" refers only to the entity that arranges with the Permittee for the service.

Q. "Customer." when used to refer to Residential service means any individual who receives Solid Waste, Recycling or Yard Debris service at a Residence (four-plex or smaller) in a Franchise Territory. An individual need not be the Person receiving the bill for such service to be considered a Customer. For rental properties where the owner of the property is required to subscribe for service, the owner shall be considered the "Customer."

R. "Depot" is an established area designated by an organization engaged in recycling where any person may deposit recyclable materials specified by that organization. Depots may not be mobile in nature.

S. "Deposit" means to throw, lay down, place, put, or to let fall.

T. "Director" is the Director of the Office of Sustainable Development of the City of Portland, Oregon, or his or her authorized representative, designee or agent.

U. "Food Soiled Paper" means paper products that cannot now be recycled or that have been in contact with organic materials to the degree that they would not be able to be recycled. Food soiled paper includes, but is not limited to, used paper cups and plates, used paper table covers, used napkins, and waxy corrugated cardboard. Food soiled paper includes recyclable paper that has been in contact with food to the degree that it is not recyclable, but does not include unsoiled cardboard boxes, newspaper or office paper.

V. "Food Waste" means all waste from meats, fish, and vegetables, which attends or results from the storage, preparation, cooking, handling, selling or serving of food for human consumption. Food Waste includes, but is not limited to, excess, spoiled or usable food or dairy products, meats, vegetable and meat trimmings, grains, breads and dough, incidental amounts of edible oils, and organic waste from food processing. It does not include large amounts of oils and meats commonly referred to as renderer.

W. "Food Waste Generating Business" means businesses and institutions whose waste is composed of a large amount of food waste. It includes but is not limited to restaurants, grocery stores, or food markets, hotels with catering operations, institutions with cafeterias, caterers, central kitchens or commissaries, bakeries, produce wholesalers and food processors. It does not include businesses that produce only incidental amounts of food waste in the course of doing business, such as from employee lunches.

X. "Franchise" means a residential Solid Waste and recyclable material collection franchise awarded by Ordinance No. 176687, and as amended by subsequent ordinances.

Y. "Franchisee" means a business that has been awarded a franchise by Ordinance No. 176687, and subsequent amending ordinances, within the Urban Services Boundary of the City of Portland, for the collection of residential Solid Waste and recyclable material, including yard debris. "Franchisee" includes any employees or other persons authorized to act on behalf of the Franchisee. "Franchisee" has a meaning identical to that of "grantee" as used in the Franchise Agreement. A "Franchisee" holds a single Franchise for service in any and all of its Franchise Territories, including any territories transferred from other Franchisees as approved by the Portland City Council, subsequent to Ordinance 176687.

Z. "Franchise Territory" means an area within the Urban Services Boundary of the City of Portland in which only a City designated hauler may collect residential Solid Waste and recyclable material, including yard debris, from residential customers. A single Franchisee may serve more than one Franchise Territory.

AA. "Generator" means an entity which uses the Solid Waste, Recycling and/or Composting collection service and containers arranged for by the "Customer."

BB. "Hazardous Waste" means Solid Waste that may, by itself or in combination with other waste, be infectious, explosive, poisonous, caustic or toxic, or otherwise dangerous or injurious to human, animal or plant life.

CC. "Independent Commercial Recycler" means a person who collects only Recyclable and/or Compostable Materials from non-Residential sources for the sole purpose of Recycling or Composting, and who does not collect Solid Waste.

DD. "Infectious Waste" as defined in ORS 459 (2003), which includes "Biological Wastes," "Cultures and Stocks," "Pathological waste," and "Sharps."

EE. "Infraction" means a failure to comply with Portland City Code Chapter 17.102 or the administrative rules promulgated thereunder.

FF. "Metro" means the regional government agency responsible for regional solid waste management and planning in the Portland Metropolitan area.

GG. "Multifamily Complex" or "Multifamily" means any multidwelling building or group of buildings that contain(s) five dwelling units or more on a single tax lot, such as apartments, condominiums, mobile home parks, or houseboat moorages. Multifamily also includes certified or licensed residential care housing, such as adult foster care homes.

HH. "OSD" means the Office of Sustainable Development of the City of Portland.

II. "Permittee" means any person granted a Commercial Collection permit under Section 17.102.120 of this Chapter.

JJ. "Person" means any individual, partnership, association, firm, trust, estate, a public or private corporation, a local government unit, a public agency, the state or any other legal entity.

KK. "Property" includes land and waterways.

LL. "Recyclable Material," "Recyclable" and "Recyclables" includes, but is not limited to, newspaper, scrap paper, ferrous scrap metal, non-ferrous scrap metal, used motor oil, corrugated cardboard and kraft paper, container glass, aluminum, tin cans, magazines, aseptic packaging, coated paper milk cartons, steel aerosol cans, plastic bottles, office paper, cooking grease, wood, rubble and other materials as may be designated by the City. As specified in ORS 459A.010(4)(g) (2003), certain manufacturing waste is not considered "Recyclable Material."

MM. "Recycling" means the series of activities including collection, separation, and processing, by which products or other materials are recovered from or otherwise diverted from the Solid Waste stream (1) for use in the form of raw materials in the manufacture of new products other than fuel and (2) in the case of source separated wood waste which has no material use, for use as fuel.

NN. "Recycling Plan Form" means the form provided by the City on which a Customer or Self-hauler makes a commitment to comply with the City's recycling requirement by specifying which materials they will recycle and by whom the materials will be collected.

OO. "Regular Basis" means occurring more than four times in a 365-day period.

PP. "Recycling District" means a business entity formed by franchisees for purposes of recycling collection under the Franchise Agreement, and having an approved plan as set forth in Section 17.102.090. "Recycling District" includes any employees or other person authorized to act on behalf of the Recycling District.

QQ. "Residence" means any dwelling unit in the franchise territory that is a four-plex or smaller, regardless of whether it has subscribed for waste collection, or has waste collection, in individual cans, carts or containers. Multifamily dwellings such as apartment complexes, condominiums, mobile home parks, or houseboat moorages with four units or fewer on the same tax lot are considered as "residences." Fraternities/sororities are also considered as "Residences." "Residence" does not include any Multifamily Complex as defined in this Section, multi-dwelling building or group of buildings that contain(s) five dwelling units or more on a single tax lot, such as condominiums, mobile home parks, or houseboat moorages, nor does "Residence" include certified or licensed residential adult foster care homes. "Residence" does not include any dwelling where over 50% of the entire building is being used for business purposes. Agreements between owners of Residences purporting to provide for the collection of Solid Waste and Recyclable on a combined basis do not alter the status of each dwelling unit as a "Residence."

RR. "Resident" means any person living in a "Residence."

SS. "Residential" means of or pertaining to a "Residence."

TT. "Self Haul, Commercial" when used in reference to Solid Waste and/or Recyclables or Compostables generated by a Commercial entity, means the collection and transportation of material from a Commercial entity where an owner or employee of the entity hauls the material rather than hiring a Permittee or Independent Commercial Recycler to perform this function.

UU. "Self Haul, Residential" when used in reference to materials from a residential source, means the collection and transportation of a homeowner's Solid Waste and/or recyclable material by the living unit owner.

VV. "Service" means the collection and transportation of Solid Waste and recyclable material by persons for compensation.

WW. "Solid Waste" has the meaning given in ORS 459.005 (2003), but not including the following materials, which the ORS definition includes:

1. Sewage sludge, septic tank and cesspool pumpings or other sludge;

2. Discarded or abandoned vehicles;

3. Recyclable or Compostable material which is source separated and set out for recycling or composting purposes.

XX. "Source Separate" means that the person who last used Recyclable or Compostable Material separates the material from Solid Waste and keeps the Recyclable or Compostable Material separate from Solid Waste.

YY. "Vehicle" includes any motor vehicle or trailer.

ZZ. "Yard Debris" means leaves, grass clippings, sod, weeds, vines, vegetative material from the yard, pumpkins, and prunings of no greater than four inches in diameter or 36 inches in length.

Large branches (greater than four inches in diameter or more than 36 inches in length), dirt, stumps, metal, rocks, ashes, animal waste, food and household Solid Waste are not considered Yard Debris.

17.102.030 Authority of Director to Adopt Rules.

(Amended by Ordinance No. 177360 and 178422, effective June 18, 2004.)

A. The Director is hereby authorized to administer and enforce the provisions of this Chapter.

B. The Director is authorized to adopt rules, procedures and forms to implement the provisions of this Chapter.

1. Any rule adopted pursuant to this section shall require a public review process. Not less than ten nor more than thirty days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time, and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.

2. During the public review, the Director or the Director's designee shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendations; taking into consideration the comments received during the public review process, and shall either adopt the proposed rules, modify or reject them. If a substantial modification is made, additional public review shall be conducted, but no additional notice shall be required if such additional review is announced at the meeting at which the modification is made. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director.

3. Notwithstanding paragraphs (2) and (3) of this section, an interim rule may be adopted by the Director without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than one year (365 days). Within five Business Days of the adoption of an interim rule, OSD staff shall send notice of the rule to all Neighborhood Associations, persons on the OSD list of parties interested in Administrative Rules, and Franchisees and Permittees, giving the language of the rule change, describing the purpose of the rule, and inviting comments to be sent to OSD.

17.102.040 Residential Collection Franchise Required.

(Amended by Ordinance Nos. 165625, 169103, 176630 and 178422, effective June 18, 2004.)

A. No person may provide residential Solid Waste or recyclable material collection, including yard debris, within the Portland Urban Services Boundary without having obtained a franchise from the City, except as provided in 17.102.042 of this Chapter.

B. Having obtained a franchise for residential Solid Waste and recyclable material collection from the City, no person shall provide or offer to provide such collection in an area within the

Portland Urban Services Boundary other than the assigned territory for which the franchise was issued.

C. No person shall accumulate, store collect, transport, dispose of or resource recover Solid Waste or recyclable material except in compliance with this chapter, other city ordinances, and state laws dealing with solid waste management and regulations and amendments promulgated under any of the foregoing.

D. Nothing in this section shall prohibit the City from withdrawing certain Solid Waste or recyclable material services by amendment to this section on the basis of finding that such change is appropriate.

E. No person other than the City Approved Residential Recycler or Recycling District may remove recyclable material that is set out in or next to a City provided Residential yellow recycling bin set out at a Residence.

17.102.042 Exceptions to Residential Franchise Requirement.

(Amended by Ordinance Nos. 169103, 171812, 177360 and 178422, effective June 18, 2004.)

A. A franchise is not required for the collection or transportation of residential Solid Waste and recyclable materials by the following persons:

- 1.** Persons transporting Solid Waste or recyclable material collected outside the City;
- 2.** Organizations which have been granted non-profit tax status by the federal government or who are organized as non-profit corporations in accordance with ORS Chapter 61 (2003) and who collect Residential recyclable materials or yard debris without charge to the generator of that recyclable materials or yard debris;
- 3.** A contractor employed to demolish, construct or remodel a building or structure, including, but not limited to, land clearing operations and construction wastes, when collecting or transporting wastes created in connection with such employment;
- 4.** Landscapers, gardeners, tree service contractors, janitors or renderers when collecting or transporting wastes created in connection with such employment;
- 5.** Persons collecting and transporting waste produced by that person, except for waste produced by a tenant at a rental dwelling. For purposes of this Subsection, solid waste produced by a tenant, licensee, occupant or similar person is produced by that person and not by the landlord;
- 6.** Persons collecting or transporting only waste tires under a valid waste tire storage or carrier permit pursuant to OAR Chapter 340;
- 7.** Persons transporting only reusable beverage containers as defined in ORS 459A (2003);

8. Federal or state agencies that collect, store, transport and dispose of solid waste or those who contract with such agencies to perform the service, but only insofar as the service is performed by or for such agencies; and,

9. Persons exclusively collecting recyclable materials from non-residential sources.

B. An organization is not required to have a franchise for the acceptance, storage or transportation of recyclable materials if those materials are accepted and stored at a depot or depots which accept recyclable material without a charge to the generator of that recyclable material.

17.102.045 Penalties for Unauthorized Collection of Recyclable Material.

(Added by Ordinance Nos. 1688551; amended by 169103 and 177360 effective May 2, 2003.)

A. Penalty Amounts:

1. Persons found in violation of Subsections 17.102.040 E. or 17.102.120 E. are subject to civil penalties of up to \$500.

2. A second violation of these Subsections by the same person may be subject to civil penalties of up to \$750.

3. Third and subsequent violations of these Subsections by the same person may be subject to civil penalties of up to \$1000.

4. Civil penalties may be assessed on a per day or per occurrence basis.

B. The Director shall consider the following criteria in determining the amount of civil penalties to be assessed under this Section:

1. The nature and extent of the person's involvement in the violation;

2. Whether the person was seeking any benefits, economic or otherwise, through the violation;

3. Whether the violation was isolated and temporary, or repeated and continuous;

4. The magnitude and seriousness of the violation;

5. The costs of investigation and remedying the violation;

6. Whether any criminal prosecutions have occurred in regard to the violations; and

7. Other relevant, applicable evidence bearing on the nature and seriousness of the violation.

17.102.050 Franchise Administration.

(Amended by Ordinance No. 177360 and 178422, effective June 18, 2004.) Notwithstanding Section 3.114.020, the Office of Sustainable Development shall be responsible for administration of all residential Solid Waste and recyclable material collection franchises.

17.102.060 Franchise Size Limit.

- A. No franchisee shall service more than 50,000 residential customers.
 - B. No franchisee shall be a subsidiary corporation of another franchisee.
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17.102.070 Forfeiture and Replacement.

(Added by Ordinance No. 167236; amended by 177360, effective May 2, 2003.)

A. In the event that the Director of the Office of Sustainable Development finds grounds for declaring a forfeiture, according to the terms of the franchise awarded by Ordinance No. 176687, and as amended by subsequent ordinances, OSD shall make a recommendation for Council action on the matter, following procedures specified in the OSD's adopted rules.

B. In preparing for the transfer of a forfeited franchise to another party, OSD shall solicit applications from current franchisees and from other parties who have given a written notice of their interest following a public notification. OSD shall determine the applicants' qualifications to assume the franchise responsibilities. OSD is authorized to then use a lottery in selecting among qualified applicants. In addition, OSD is authorized to conduct an appraisal of the value of the forfeited franchise. The lottery winner(s) shall then be offered the opportunity to purchase the franchise from the City within a specified time period at the appraised value.

C. In cases where a franchisee abruptly ceases to provide service, and there is insufficient time to conduct an appraisal and permanently transfer a franchise, OSD is authorized to recommend that the Council appoint a temporary service provider. If the Council makes such an appointment, it may also guarantee a minimum level of revenue to that company, in order to encourage companies who would not otherwise be willing to assume this responsibility on a short-term basis. Such minimum level of revenue would be achieved by the City's supplementing revenues received by the temporary service provider from its temporary customers.

17.102.080 Residential Recycling Service Delivery.

(Amended by Ordinance No. 177360, effective May 2, 2003.)

A. Residential recycling collection shall be performed by either an Approved Residential Recycler or a Recycling District.

17.102.090 Residential Recycling Plans Required.

(Amended by Ordinance No. 177360, effective May 2, 2003.)

A. Approved Residential Recyclers and Recycling Districts must receive City approval of Recycling Collection and Processing Plans prior to initiation of service, and at subsequent times as provided in the Administrative Rules.

B. Recycling Collection and Processing Plans shall be submitted on forms provided by the City and shall include, at a minimum, the following information:

1. Number of residential households in service area;
2. Description of recycling collection equipment;
3. Address and City zoning classification of processing/storage sites;
4. Description of processing and storage activities;
5. List of markets where each recyclable material will be sold;
6. List of the number of staff, their positions and FTE for each;
7. Address and phone number of office;
8. Cost of recycling collection and processing equipment, the financial institution used and type of financing obtained; and
9. Other information as deemed relevant and necessary by the Office of Sustainable Development.

C. OSD shall review each submitted Recycling Collection and Processing Plan to determine if the plan sets out reasonable means and methods to deliver high quality recycling to City residents, and which are capable of meeting Administrative Rule standards for residential recycling service delivery. Approved Residential Recyclers and Recycling Districts shall be notified in writing by the City as to the acceptability of their plans and any recommended modifications if approval is not given.

D. Failure to receive City approval of a plan shall result in denial of the City's permission to provide recycling collection service and the appointment of another firm by the City to provide recycling collection service.

17.102.100 Franchise System Evaluation.

(Added by Ordinance No. 177360, effective May 2, 2003.)

A. On an annual basis, the Office of Sustainable Development shall prepare a report on the status and performance of the franchise collection system for the City Council. The report shall comment on progress toward achievement of the relevant goals stated in Section 17.102.010 of this Chapter, and in OSD budget documents.

B. Commencing at least five years prior to the expiration of the franchise term, the City Council shall evaluate the franchise system to determine if the system is achieving waste reduction, increased recycling, and cost-effective collection service. Such evaluation shall include an opportunity for public discussion and comment.

17.102.110 Residential Solid Waste and Recycling Rates and Charges.

(Amended by Ordinance No. 165625, effective Aug. 1, 1992.) For all service levels of franchised residential service collection, rates and charges shall be as set forth in Figure 6 published at the end of Title 17.

17.102.115 Large Size Container Service to Residential Customers.

(Added by Ordinance No. 165625; amended by 169103 and 171812, effective December 26, 1997.)

A. Any residential putrescible waste collected in containers exceeding two yards capacity, by a Commercial Permittee or Franchisee collecting outside the Franchisee's territory, shall be emptied within seven days of the empty container being placed at the residence.

B. Commercial Permittees are prohibited from providing collection of any putrescible waste on a Regular Basis to residential customers without the express written permission of the Franchisee in whose territory the collection would be occurring.

C. Within the City, Franchisees are prohibited from providing containers larger than two cubic yards which are emptied on a regular basis to residential customers outside their franchise territory.

17.102.120 Commercial Collection Permit Required.

(Amended by Ordinance Nos. 169103, 171812, 177360 and 178422, effective June 18, 2004.)

A. No person shall provide commercial collection of Solid Waste, compostables and/or recyclable material within the City without having obtained an annual commercial collection permit from the Office of Sustainable Development, except as provided in Section 17.102.122. Permits shall be issued for the year beginning July 1 and ending June 30.

B. Permittees must comply with Administrative Rules promulgated under Section 17.102.030, including provision of recycling collection to all who receive collection of Solid Waste.

C. Permittees may charge a person who source separates recyclable material - and makes it available for reuse or recycling - less, but not more, for collection and disposal of Solid Waste and collection of Recyclable Material than the collection service charges a person who does not source separate recyclable material. This provision affects charges for collection of Yard Debris but does not affect charges for the collection of other Compostables.

D. Any person who provides commercial collection of Solid Waste within the City without a current commercial collection permit from OSD shall be subject to a civil penalty of up to \$500 per day.

E. No person who is not authorized by the Customer may remove recyclable material that is set out by the Customer for recycling.

F. As provided in Section 29.30.140, owners of Multifamily rental dwellings may not Self-haul Solid Waste generated by their tenants, but must contract for waste collection services from a Permittee.

17.102.121 Administration and Enforcement of Commercial Collection Permits.

(Added by Ordinance 171812; amended by 175405, 177360 and 178422, June 18, 2004.)

A. The Director may impose assessments of up to \$1500 per incident for violations of the commercial permit regulations.

B. The Director may revoke or deny the issuance or renewal of a Commercial Collection Permit, or may suspend or revoke a Commercial Collection Permit, for violations of the Commercial Administrative Rules for Solid Waste and Recycling or under other conditions as follows:

1. Any Commercial Permittee who has accumulated within a 365-day period more than five serious violations;

2. Any Permittee whose Solid Waste collection from commercial accounts in Portland during the previous four calendar quarters was more than 2000 tons, and who has accumulated within a 365-day period more than two serious violations per 2000 tons of Solid Waste collected during the previous four calendar quarters;

3. Any Permittee whose Solid Waste collection from commercial accounts in Portland during the previous four calendar quarters was 2000 tons or less and who has accumulated within a 365-day period more than three serious violations;

4. Any Permittee who has failed to pay fees as described in Section 17.102.200; and

5. Any Permittee who has been found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City.

17.102.122 Exceptions to Commercial Collection Permit Requirement.

(Added by Ordinance Nos. 169103 and 177360; amended by 178422, effective June 18, 2004.) A commercial collection permit is not required for the collection or transportation of commercial Solid Waste and recyclable materials by any of the following:

A. Persons transporting Solid Waste, Recyclable or Compostable material collected outside the City;

B. A contractor employed to demolish, construct or remodel a building or structure, including, but not limited to, land clearing operations and construction wastes, when collecting or transporting wastes created in connection with such employment;

C. Landscapers, gardeners, farmers, tree service contractors, janitors or renderers when collecting or transporting wastes created in connection with such employment;

D. Persons collecting or transporting only waste tires under a valid waste tire storage or carrier permit pursuant to OAR Chapter 340;

E. Persons transporting only reusable beverage containers as defined in ORS Chapter 459A (2003);

F. Federal or state agencies that collect, store, transport and dispose of Solid Waste or those who contract with such agencies to perform the service, but only insofar as the service is performed by or for such agencies; and

G. Persons exclusively collecting Recyclable or Compostable materials from anyone other than Residential Customers.

17.102.130 Transporting Garbage.

(Added by Ordinance Nos. 176585 and 177360, effective May 2, 2003.) No person, whether acting as private citizen, principal, employee, or agent shall transport any refuse through streets in the district bounded by SW Oak Street, SW First Avenue, SW Yamhill Street and SW Tenth Avenue, except between the hours of 10 p.m. and 10 a.m. or when otherwise authorized by a City Engineer, City Police Officer, or Nuisance Inspector.

17.102.140 Commercial Collection Permit Application.

(Amended by Ordinance Nos. 166561, 169103, 171812, 177360 and 178422, effective June 18, 2004.) Applications for commercial collection permits shall be made to the Office of Sustainable Development on forms provided by OSD, no later than the deadline stated on the form. The application shall include:

A. The name, street and mailing address, and business telephone number of the applicant;

- B. Applicant business ownership information, responsible official and contact person;
- C. City of Portland Business License number or License exemption form;
- D. Any other information deemed relevant and necessary by the Director; and
- E. An application fee of \$60.

17.102.150 Reserved.

17.102.155 Commercial Tonnage Fee.

(Amended by Ordinance Nos. 165625, 166561, 168081, 169103, 171812, 176522, 177360 and 178422, effective June 18, 2004.) Commercial permittees shall, when invoiced quarterly by the Office of Sustainable Development, pay a tonnage fee to the City. Fees shall be assessed up to \$3.80 per ton of commercial Solid Waste collected within the City and deposited in disposal facilities authorized by Metro. Payments shall be made within 30 days of the date of the invoice. Interest shall accrue at 1-1/2% per month on balances which remain unpaid as of 30 days after the date of invoice, compounded daily from the due date.

17.102.158 Divulging Particulars of Report Forms Prohibited.

(Amended by Ordinance Nos. 168081, 169103 and 177360, effective May 2, 2003.) Except as otherwise required by law, it shall be unlawful for the Office of Sustainable Development or any officer, employee, or agent of the City, to divulge, release, or make known in any manner any information submitted or disclosed to the City under terms of Sections 17.102.155 or 17.102.170. Nothing in this Section shall be construed to prohibit:

- A. The disclosure of the names and addresses of any persons to whom permits have been issued; or
- B. The disclosure of general statistics in a form which would prevent the identification of financial information regarding any individual permittee.

17.102.160 Registration Required for Independent Commercial Recyclers.

(Added by Ordinance No. 169103; amended by 177360 and 178422, effective June 18, 2004.)

- A. No person shall provide service as an Independent Commercial Recycler within the City without having registered with the Office of Sustainable Development, by providing OSD with a copy of their City of Portland Business License, or with their Business License number.
- B. Any person who provides service as an Independent Commercial Recycler within the City without having so registered with the City shall be subject to a civil penalty of up to \$500 per day.

C. All Independent Commercial Recyclers which collect in the City at least 25 tons of recyclables and/or compostables per year shall report quarterly to OSD on the amounts of recyclables collected in the City, on forms provided by OSD.

17.102.170 Hazardous Waste Remedial Action Surcharge.

(Repealed by Ordinance No. 175375, effective October 1, 2000.)

17.102.180 Businesses and Multifamily Complexes Required to Recycle.

(Added by Ordinance No. 169103; amended by 171812, 177360 and 178422, effective June 18, 2004.)

A. Requirement to Recycle.

1. All Businesses within the City shall recycle their recyclable materials in compliance with Administrative Rules established by the Office of Sustainable Development.

2. All Multifamily Complexes within the City shall establish recycling systems, for their tenants' use, in compliance with Administrative Rules established by OSD.

3. For all building projects within the City where the total job cost (including both demolition and construction phases) exceeds \$50,000, the general contractor shall ensure that certain materials generated on the job site are recycled in compliance with Administrative Rules established by OSD. For an affected building project where there is no general contractor, this requirement applies to the property owner.

B. City monitoring of compliance will be accomplished through Customers' and Self-haulers' completion of Recycling Plan Forms and City review of those forms, as well as through City inspection of onsite recycling and waste systems.

C. Any Business or any other Person may sell or exchange at fair market value its own recyclable materials which are source separated for reuse or recycling. This Chapter and any Administrative Rules promulgated hereunder are not intended to limit the ability of any Person to compete openly to provide recycling collection service to businesses within the City of Portland.

17.102.190 Fees Credited to Solid Waste Management Fund.

(Amended by Ordinance Nos. 166724, 167236, 174830, 177360 and 178422, effective June 18, 2004.)

A. All fees, civil penalties, assessments and interest received by the Office of Sustainable Development with respect to Solid Waste collection or disposal shall be deposited with the City Treasurer and credited to the Solid Waste Management Fund.

B. Monies deposited into the Solid Waste Management Fund shall be used for administration, implementation and operation of Solid Waste, recycling, composting and sustainable development programs, consistent with all applicable constraints on use of funds. OSD may

spend or apply such fees and charges to implement and administer Solid Waste, recycling, composting and sustainable development policies approved by the Council.

C. The proceeds from the City's sale of a forfeited franchise shall be deposited with the City Treasurer and credited to the Solid Waste Management Fund. Such proceeds shall be used to offset the City's costs of the process of replacing a franchisee, including its costs for providing any necessary temporary services, and to offset program costs to the public.

17.102.200 Fees As A Debt, Enforcement and Collection.

(Amended by Ordinance Nos. 166561, 168081, 171812 and 177360, effective May 2, 2003.)

A. All fees, civil penalties, assessments and interest imposed by this Chapter shall be a debt due and owing to the City of Portland and may be collected by civil action in the name of the City of Portland. Any fees, civil penalties and assessments remaining unpaid after the due date shall accrue interest at 1-1/2% per month, compounded daily from the due date. In addition, the City may revoke or deny renewal of any commercial collection permit to permittees who have not paid commercial permit or tonnage fees or infraction assessments by the deadlines provided in this Chapter or in Administrative Rules adopted pursuant to this Chapter.

B. Fees, civil penalties, assessments and interest shall be enforced and collected by the Office of Sustainable Development. OSD may waive or reduce any civil penalties or assessments for good cause, according to and consistent with written policies. The Director of OSD may refer collection and enforcement to another City Agency.

17.102.210 Reserved.

17.102.220 Franchise System Evaluation.

(Repealed by Ordinance No. 177360, effective May 2, 2003.)

17.102.225 Authority of Director.

(Repealed by Ordinance No. 177360, effective May 2, 2003.)

17.102.230 Right of Appeal and Payment of Penalties.

(Amended by Ordinance Nos. 169103, 175405, 177360 and 178422, effective June 18, 2004.)
Except as provided in 17.102.310, Right of Appeal for Illegal Dumping, and 17.102.320, Collection of Penalties and Costs for Illegal Dumping:

A. Any person receiving a Notice of Civil Penalty or Notice of Assessment shall, within 14 Business Days of issuance of the notice either pay to the City the stated amount of the Civil Penalty or Assessment or request an appeal hearing by the Code Hearings Officer in accordance

with procedures set forth in Chapter 22.10 of the City Code. The filing of an appeal request shall stay the effective date of the Civil Penalty or Assessment until the appeal is determined by the Code Hearings Officer. If, pursuant to said appeal hearing, payment of the Civil Penalty or Assessment is ordered, such payment must be received by the City or postmarked within 15 calendar days after the order becomes final.

B. A person may appeal to the Code Hearings Office in accordance with Title 22 of the City Code if the person receives:

1. a written denial of an application for a Commercial Collection permit;
2. a written denial of an application for renewal of a Commercial Collection permit; or
3. any written suspension or revocation of a Commercial Collection permit.

17.102.240 Definitions for Ban of Polystyrene Foam Food Containers (PSF).

(Amended by Ordinance 180330, effective August 18, 2006.) As used in Sections 17.102.240 through 17.102.290, the following terms have the following meanings:

- A.** “Biodegradable”, means material capable of being broken down by microorganisms into simple substances or basic elements.
- B.** “Chlorofluorocarbons”, are the family of substances containing carbon, fluorine and chlorine.
- C.** “Customer”, means any person obtaining food or beverages from a restaurant or retail food vendor.
- D.** “Food vendor”, means any restaurant or retail food vendor.
- E.** “Food packager”, means any person, located within the City of Portland , who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.
- F.** “Non-profit food provider”, means a recognized tax exempt organization which provides food as a part of its services.
- G.** “Prepared food”, means food or beverages which are served on the vendor's premises without preparation, or are prepared on the vendor's premises by cooking, chopping, slicing, mixing, brewing, freezing or squeezing. "Prepared food" does not include any raw uncooked meat or eggs. Prepared food may be eaten either on or off the premises.
- H.** “Person”, means any natural person, firm, corporation, partnership, or other organization or group however organized.
- I.** “PSF”, means any material composed of polystyrene and having a closed cell air capacity of 25 percent or greater, or a density of less than 0.787 grams per cubic centimeter based on an

average polystyrene density of 1.05 grams per cubic centimeter, as determined by an analytical testing laboratory.

J. “Recycled”, describes a type of material that is separated from the solid waste stream and utilized as a raw material in the manufacture of a new product or new economic use.

K. “Restaurant”, means any establishment located within the City of Portland , selling prepared food to be eaten by customers. Restaurant includes a sidewalk food vendor.

L. “Retail Food Vendor”, "Vendor" means any store, shop, sales outlet or other establishment, including a grocery store or a delicatessen, located within the City of Portland , which provides prepared food.

M. “Reuse”, means the process by which a product is reclaimed or reprocessed into another useful product.

17.102.250 Prohibition on Certain PSF Uses.

(Amended by Ordinance No. 180330, effective August 18, 2006.)

A. On and after March 1, 1989, no restaurant, retail food vendor or non-profit food provider shall serve food and after June 30, 1989 no packager shall package meat, eggs, bakery products or other food in polystyrene foam (PSF) containers, manufactured with chlorofluorocarbons (CFCs) which do not reduce the potential for ozone depletion by more than 95 percent, compared to the ozone depletion potential of CFC-12 (dychlorodifluorothane). Compounds banned include: CFC- 11, CFC- 12, CFC-113, CFC-114, CFC-115, Halon-1211, Halon-13-1 and Halon2402. Food vendors may be required to furnish a written statement from the manufacturer or supplier of polystyrene foam products used by that food vendor, indicating that the chemical compounds used in the manufacture of the vendor's polystyrene foam products meet the provisions of this code.

B. On and after January, 1990, no restaurant or retail food vendor shall serve prepared food in any polystyrene foam (PSF) products.

17.102.260 Exemptions for PSF Use.

(Amended by Ordinance No. 180330, effective August 18, 2006.) The City Council, or its appointee, may exempt a food vendor, food packager or non-profit food provider from the requirements of this Code for a one year period, upon showing by the applicant that the conditions of this Code would cause undue hardship. The phrase undue hardship, shall be construed to include, but not be limited to:

A. Situations where there are no acceptable alternatives to PSF packaging for reasons which are unique to the vendor, packager or provider;

B. Situations where compliance with the requirements of this Code would deprive a person of a legally protected right. If a request for exemption is based upon a claim that a legally protected

right would be denied if compliance were required and such request for exemption is denied, review of the denial shall only be by writ of review as provided for in ORS 34.010 to 34.102, and not otherwise

17.102.270 Enforcement and Notice of Violations for PSF Ban.

(Amended by Ordinance Nos. 176982 and 180330, effective August 18, 2006.)

A. The Director or Director's designee of the Office of Sustainable Development, upon determination that a violation of this code or regulations duly adopted pursuant to this code has occurred, shall issue a written notice of the violation by certified mail to the vendor or food packager which will specify the violation and appropriate penalty.

B. The vendor or food packager shall, upon receipt of a notice of violation, pay to the City the stated penalty or appeal the finding of a violation to the Code Hearings Officer for a hearing within 15 days of receipt of the notice.

17.102.280 Fines for PSF Ban.

(Amended by Ordinance No. 180330, effective August 18, 2006.) Violations of this ordinance shall be punishable by fines as follows:

A. A fine not exceeding \$250 for the first violation in a one year period;

B. A fine not exceeding \$500 for the second and each subsequent violation in a one year period.

17.102.290 Additional Regulations for PSF Ban.

(Amended by Ordinance Nos. 176982 and 180330, effective August 18, 2006.) The Office of Sustainable Development is authorized to promulgate additional regulations and other actions reasonable and necessary to enforce this code. Prior to the adoption of such regulations, the Office of Sustainable Development shall give public notice of its intent to adopt regulation, provide copies of the proposed regulations to identified interested parties and conduct a public hearing on the proposed regulations. Public notice shall be given when regulations have been finally adopted. Copies of current regulations shall be made available to the public upon request.

Figure 6 (Chapter 17.102)

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